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U.S. Department of Justice

Federal Bureau of Investigation

CALEA Implementation Section
14800 Conference Center Drive, Suite 300
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March 2, 2000

97-213

Ms. Maggie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB-204
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Communications Assistance for Law Enforcement Act

Dear Ms. Salas:

This letter will confirm our understanding of the matters discussed at a meeting on February 4, 2000, wherein representatives of the Federal Bureau of Investigation met with representatives of the Federal Communications Commission to discuss the above-referenced matter. Present from the FBI's CALEA Implementation Section were Louis Degni of the Drug Enforcement Administration, and Jon Pifer of the FBI, Office of the General Counsel. Present from the Commission were Julius Knapp, Rodney Small, Jerome Stanshine and Geraldine Matise.

Mr. Degni and Mr. Pifer explained that our purpose in meeting with FCC representatives was to describe some concerns regarding interpretation of certain of the Commission's rules regarding CALEA. The first issue, related to dialed digit extraction, derives from a recent discussion between a member of my staff and a member of the telecommunications industry. The latter two issues (party hold/join/drop and "meet me" conference calls) have arisen in the context of the FBI's discussions with Subcommittee TR 45.2 of the Telecommunications Industry Association which is engaged in revising J-STD-025. It is noted that these issues do not relate to any petitions for rulemaking or other actions currently pending before the FCC in which the FBI has an interest.

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1. Dialed Digit Extraction.

The first issue discussed pertains to the Commission's rule on *dialed digit extraction* (also known as "post-cut-through dialing"), and what we view as an incorrect interpretation by at least one manufacturer of the requirements for implementing that capability.¹ Under the rule, carriers must be capable of providing an authorized law enforcement agency with "digits dialed by a subject when a call is connected to another carrier's service for processing and routing." As the Commission noted, one example of this type of information would include digits representing the ultimate destination of a call dialed by a subject-caller after using an 800 number to connect to a long distance carrier. See Third Report and Order, ¶112. There appears to be no disagreement as to a carrier's duty in the context of this one clear example, however, we believe there may be some confusion in the industry as to whether dialed digit extraction should be limited solely to this situation. It is the FBI's position that neither CALEA nor the FCC's rules require such a result.

The genesis of our concern comes from a recent conversation with one major manufacturer, wherein the opinion was expressed that the Commission's rule requires a carrier to ensure that post-cut-through dialed digits are *not* supplied when the call is connected to a private network, such as a PBX. This manufacturer would apparently read the rule as requiring that dialed digits be provided by a carrier "when [*and only when*] a call is connected to another [*telecommunications*] carrier's service. . . ." Accordingly, we understand that this manufacturer is developing its CALEA software to *preclude* dialed digit extraction under circumstances such as the PBX situation described above. This approach would have the effect of preventing a law enforcement agency's access to certain call identifying information, such as the digits representing a telephone extension dialed by the subject-caller after his call is connected to a PBX, even though that information is otherwise reasonably available to the carrier. In our view, this produces an anomalous result that was neither intended nor required by the Commission's rule. In the example used above, it is the FBI's position that the carrier should provide access to the digits representing a telephone extension (and any other reasonably available call identifying information) even after the call is connected to a PBX.

¹ See In the Matter of Communications Assistance for Law Enforcement Act, Third Report and Order, CC Doc. No. 97-213, FCC 99-230, App. A: Final Rules §22.1102 (rel. Aug. 31, 1999) (herein "Third Report and Order").

2. Party Hold, Join, Drop on Conference Calls.

The second issue concerns the *party hold, join, drop on conference calls* capability. During meetings last year with Subcommittee TR 45.2, the FBI contended that the revised interim standard, J-STD-025, should require this capability for all calls involving multiple parties, and not be limited solely to those calls supported by a "conference call" type feature. For example, the information should be provided in cases where the subject-caller is connected to two other parties via "call waiting" and toggles between the two conversations using the "flash" key.

Subcommittee TR 45.2 disagreed with the FBI on this approach. As it is currently drafted, the revised interim J-STD-025 standard specifies that party hold/join/drop information must be reported only in cases involving a "conference call," and not in other multi-party situations such as the call-waiting scenario described above.² This is, in the FBI's view, an unduly narrow approach. As the Commission very ably describes in the Third Report and Order, party hold/join/drop information is extremely important to aid law enforcement officers in determining "who is talking to whom" in a telephone conversation involving more than two callers. See Third Report and Order, ¶74. In the FBI's view, therefore, the FCC's rule requiring a party hold/join/drop capability should be understood to apply to all such multi-party calling situations.

3. "Meet Me" Conference Calls.

Finally, Mr. Pifer and Mr. Degni discussed with you our views with respect to "meet me" conference calls. During last year's meetings with Subcommittee TR 45.2, the FBI advocated that the revised standard should include provisions regarding surveillance of so-called "meet me" conference calls. This, as you know, is a service wherein a multi-party call is set up on a "bridging" device that is separate from the equipment, facilities and services associated with a subscriber's telephone service. In our view, the standard should specify the requirements for a telecommunications carrier who is a provider of "meet me" conference services, when such a carrier is presented with an order directing it to facilitate surveillance of a particular "meet me" conference call.

² Although, under the current draft of the revised J-STD-025, messages indicating when the "flash" key is utilized would be delivered to a law enforcement agency, this would not be an adequate substitute for party hold/join/drop information. Rather than providing a clear indication, reliance on such a message would require a law enforcement officer to *infer* a change to the identities of the parties to the conversation.

The position finds support, we believe, in the Commission's discussion of conference calling in the Third Report and Order wherein it stated:

We recognize, as DoJ/FBI acknowledge, that if the subject arranges for a 'meet me' conference bridge, the LEA [law enforcement agency] will need a Title III order to cover the communication of the conference bridge. Under those circumstances, the carrier that provides the conference bridge should provide an IAP [intercept access point] to the LEA.

See Third Report and Order, ¶67. As described in the letter to the Commission of December 23, 1999 from Grant Seiffert, the TIA Subcommittee elected not to standardize any requirements for "meet me" surveillance essentially for two reasons. First, the group contended that the Commission's Third Report and Order did not mandate such action. Second, the Subcommittee was reluctant to determine standards for the service because no providers of "meet me" service had apparently participated in the standards formation process.

The Commission did address "meet me" service in its Third Report and Order, recognizing that a provider of such service should provide an intercept access point to a law enforcement agency when it is served with an appropriate authorization. In our view, the provision of an "intercept access point" necessarily includes ensuring the capabilities required by Section 103 of CALEA. Moreover, we disagree with Mr. Seiffert's suggestion in his above-referenced letter that any statutory basis exists for exempting "meet me" conference bridge service from Section 103. Therefore, it is the FBI's position that a carrier that provides "meet me" service should ensure the interception capabilities required by CALEA with respect to such service.

4. Conclusion

The FBI has not formally requested action from the Commission with respect to the issues discussed herein, and at this juncture seeks only to have the Commission understand our concerns.

Ms. Maggie Roman Salas

The FBI commends the FCC for its continued vigilant support of the important public safety and security concerns that formed the basis for the passage of CALEA. We thank you for your attention in understanding these concerns. Please do not hesitate to contact me or my staff with questions regarding any of the matters discussed herein.

Sincerely,



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Senior Project Manager/Chief
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